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Docket No. PPC-5026 SEP 05 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Henri Brisebois Conf. No. 1208
Appln. No. : 10/699,052
Filed : October 31, 2003
Title : DISCRETE ABSORBENT ARTICLES
Art Unit : 3761
Examiner : Hand, Melanie J.

I hereby certify that this correspondence is being filed with the United States
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September 5, 2007

(Date of Transmission)

Paul J. Higgins

(Name of applicant, assignee, or Registered Representative)

/Paul J. Higgins/

(Signature)

September 5, 2007

(Date of Signature)

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

This Appeal Brief is being filed in reply to the Examiner's final rejection of claims 31-37 in
the Final Office Action dated September 5, 2006.

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1. REAL PARTY IN INTEREST

The real party of interest of the present application on appeal is the assignee, McNeil-PPC, Inc..

2. RELATED APPEALS AND INTERFERENCES

There are no currently pending appeals or interferences relating to the present pending Patent Application.

3. STATUS OF THE CLAIMS

Claims 31-37 are pending in this application and have been finally rejected in the Final Office Action dated September 5, 2006. Claims 31-37 are on appeal.

4. STATUS OF THE AMENDMENTS

Claim 34 was amended in the Response to the Final Office Action filed March 5, 2007. The Response filed on March 5, 2007 was entered by the Examiner, thus the claims for purposes of this appeal include claims 31-37.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention embodied by the subject application on appeal is directed to an absorbent article including a substantially transparent body-faceable, liquid-permeable cover layer, a substantially transparent, liquid-impermeable barrier layer, and a substantially transparent liquid absorbing absorbent system arranged between the cover layer and barrier layer. Claim 31 is the sole independent claim pending in the application. Antecedent support for each element of claim 31 is noted in the parenthesis following each claim element.

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31. An absorbent article comprising:

a substantially transparent body-faceable, liquid-permeable cover layer (page 2, paragraph [0020], paragraph [0022] and element 31 in Fig. 2A);

a substantially transparent, liquid-impermeable barrier layer (page 5, paragraph [0047] and element 35 in Fig. 2A);

a substantially transparent liquid absorbing absorbent system (page 2, paragraph [0025] and element 100 in Fig. 2A) arranged between said cover layer and said barrier layer (Fig. 2A), wherein said absorbent system is substantially free of cellulosic material (page 4, paragraph [0035]) and comprises a mixture of a hot melt adhesive and a liquid-absorbing polymer (page 3, paragraph [0027] and paragraph [0030]).

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 31-37 were finally rejected under 35 USC 103(a) as being unpatentable over Carlucci et al. (US2003/0065299) in view of Luizzi (EP1013291).

7. ARGUMENT

1. Are claims 31-37 unpatentable under 35 USC 103(a) in view of Carlucci et al. (US2003/0065299) and Luizzi (EP1013291)?

Claim 31 recites, in part, that the claimed absorbent article includes "a substantially transparent liquid absorbing absorbent system arranged between said cover layer and said barrier layer, *wherein said absorbent system is substantially free of cellulosic material* and comprises a mixture of a hot melt adhesive and a liquid-absorbing polymer". (Emphasis Added) It is respectfully submitted that a close review of the cited references reveal that they fail, either singularly or in combination, to disclose and/or suggest an article including such a structure.

US Patent Application Publication No. 2003/0065299 to Carlucci et al. purports to disclose a transparent absorbing article. In one embodiment the absorbent core of said

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transparent article includes a water based hydrogel adhesive. This reference fails to disclose or suggest the use of a mixture of a hotmelt adhesive and a liquid absorbent polymer in the manner of the claimed invention. This reference also fails to disclose the use of such a mixture in an absorbent system that is free of cellulosic material in the manner of the claimed invention according to amended claim 31.

EP1013291 to Luizzi discloses a hot melt adhesive mixture that is capable of absorbing aqueous liquids, the mixture may include a liquid absorbing polymer. Luizzi also discloses an absorbent article including such hot melt adhesive mixture, the article having a cover layer 10, barrier layer 20 and an absorbent element 30. The hot melt adhesive mixture 40 adheres the cover 10 to the absorbent element 30. It is noted that Luizzi does not specify that the absorbent element 30 is free of cellulosic material in the manner of the claimed invention nor does Luizzi suggest the use of a hotmelt adhesive mixture in a transparent article.

In view of the above, it is respectfully submitted that the cited references fail, either singularly or in combination, to disclose and/or suggest an article including "a substantially transparent liquid absorbing absorbent system arranged between said cover layer and said barrier layer, *wherein said absorbent system is substantially free of cellulosic material and comprises a mixture of a hot melt adhesive and a liquid-absorbing polymer.*"

Claims 32-37 depend either directly or indirectly from claim 31 and thus are allowable at least for the reasons set forth above with respect to claim 31.

In the Final Office Action the Examiner suggests that it would be obvious to one of skill in the art to modify the hydrogel material taught by Carlucci to further include the hot-melt adhesive and liquid absorbent hydrogel polymer as taught by Luizzi. (See Office Action, p. 2-3). The Examiner's position is respectfully traversed. Hot melt adhesive is typically applied at an elevated temperature accordingly if a hot melt adhesive was applied to the hydrogel adhesive of Carlucci the water in the hydrogel adhesive would evaporate causing serious processing problems. Further, the water in the hydrogel adhesive would be absorbed by the liquid absorbent polymer further resulting serious processing problems and rendering the polymer ineffective at

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absorbing additional fluid. Accordingly, it is submitted that it would not be obvious to one of ordinary skill in the art to make the combination proposed by the Examiner to thereby arrive at the claimed invention.

In the Advisory Action dated April 18, 2007 the Examiner states as follows:

With respect to applicant's arguments regarding the rejection over Carlucci in view of Luizzi, applicant argues that there is no motivation to combine these references because the hot melt adhesive of Luzzi could not be applied to the hydrogel adhesive of Carlucci. Carlucci cites Hydromelt NP-2257 by H.B. Fuller Company in paragraph 0045 as an example of the desired hydrogel adhesive. *It is speculated herein that Carlucci intended instead to cite H.B. Fuller's Hydro-Lock hot melt adhesive*, which is a water-based absorbent hydrogel hot melt adhesive. Examiner has attached the product literature associated with this adhesive for the purpose of reference only and to fully respond to applicant's argument. In no way does Examiner intend the introduction of the literature as a new grounds for rejection. Since the adhesive of Carlucci is also a hotmelt adhesive, applicant's argument is immaterial, as this presents an additional suggestion to combine the teachings of Carlucci and Luizzi. As to applicant's arguments that the water in the hydrogel adhesive would be absorbed by the superabsorbent hydrogel material, this argument is also immaterial, as the compatibility of a hot melt adhesive material and a hydrogel material is evidenced by the prior art of Carlucci in teaching the hotmelt Hydrolock adhesive mentioned supra. (Emphasis Added)

It is respectfully submitted that the Examiner's comments in the Advisory Action are improper. *There is absolutely no reason* to believe that the Carlucci reference incorrectly identified the "wrong" adhesive as suggested by the Examiner. Further, it is respectfully submitted that is improper for the Examiner to "speculate" as to what a reference "intended" to disclose. In addition, the literature provided by the Examiner is insufficient to establish the nature of the identified "hydro-lock" adhesive and/or whether such an adhesive constituted prior art at the time the invention was made. It is further noted that although the Examiner indicates in the Advisory Action that the literature is for "reference only" the Examiner then relies upon the

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same literature to substantiate the grounds for rejection. Again it is respectfully submitted that this is improper.

Again, it is emphasized that hot melt adhesive is typically applied at an elevated temperature. Accordingly if a hot melt adhesive of Luzzi was applied to the hydrogel adhesive of Carlucci the water in the hydrogel adhesive would evaporate causing serious processing problems. Further, the water in the hydrogel adhesive would be absorbed by the liquid absorbent polymer further resulting serious processing problems and rendering the polymer ineffective at absorbing additional fluid. Accordingly, it is submitted that it would not be obvious to one of ordinary skill in the art to make the combination proposed by the Examiner to thereby arrive at the claimed invention. The additional "literature" identified by the Examiner does not alter or change the above arguments nor does the additional "literature" render "obvious" the combination proposed by the Examiner.

In view of the above, allowance of the present application is respectfully requested.

Respectfully submitted.

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Date: September 5, 2007

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8. CLAIMS APPENDIX

Claims 1-30 (Canceled)

31. (Previously Presented) An absorbent article comprising:

- a substantially transparent body-faceable, liquid-permeable cover layer;
- a substantially transparent, liquid-impermeable barrier layer;
- a substantially transparent liquid absorbing absorbent system arranged between said cover layer and said barrier layer, wherein said absorbent system is substantially free of cellulosic material and comprises a mixture of a hot melt adhesive and a liquid-absorbing polymer.

32. (Previously Presented) The absorbent article according to claim 31, wherein said absorbent system consists essentially of a substantially transparent liquid absorbing coating consisting essentially of said hot melt adhesive and said liquid-absorbing polymer.

33. (Previously Presented) The absorbent article according to claim 31, further comprising:

- a substantially transparent separating layer arranged between said cover layer and said absorbent system.

34. (Previously Presented) The absorbent article according to claim 33, wherein said substantially transparent separating layer is free of fibrous material.

35. (Previously Presented) The absorbent article according to claim 34, wherein said liquid-absorbing polymer comprises a superabsorbent polymer.

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36. (Previously Presented) The absorbent article according to claim 35, wherein the article has a light transmittance of greater than about 45%.

37. (Previously Presented) The absorbent article according to claim 36, wherein the separating layer comprises a fibrous material having a denier in a range from about 1.5 denier per fiber (dpf) to about 15 dpf.

9. **EVIDENCE APPENDIX**

None

10. **RELATED PROCEEDINGS APPENDIX**

None